

**ASSEMBLY BILL**

**No. 1188**

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**Introduced by Assembly Member Wolk**

February 22, 2005

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An act to amend Sections 11162 and 11166.01 of the Penal Code, and to amend Section 15630 of the Welfare and Institutions Code, relating to abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1188, as introduced, Wolk. Abuse: reporting.

Under existing law, the failure of a health care practitioner to report injuries related to firearms use or domestic violence, or of a mandatory reporter to report child, elder, or dependent adult abuse, is punishable by imprisonment in a county jail for up to 6 months, or by a fine of up to \$1,000, or by both that fine and imprisonment. A supervisor or administrator who impedes or inhibits a report of child abuse is guilty of an infraction that is punishable by a fine of up to \$5,000. Any mandated reporter who willfully fails to report elder or dependent abuse, where that abuse results in death or great bodily injury, is punishable by up to one year in a county jail, by a fine of up to \$5,000, or by both that fine and imprisonment.

This bill would make failure to report, or impeding or inhibiting the report of, all the above types of abuse, punishable by imprisonment in the county jail for up to 6 months, or by a fine of up to \$1,000, or by both that fine and imprisonment. If that failure to report or impeding or inhibiting of a report, results in death or great bodily injury, the punishment would be imprisonment in the county jail for up to one year, a fine of up to \$5,000, or by both that fine and imprisonment. Because the bill would expand the scope of crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11162 of the Penal Code is amended to  
2 read:

3 11162. ~~A~~ (a) *Except as provided in subdivision (b), a*  
4 *violation of this article is a misdemeanor, punishable by*  
5 *imprisonment in a county jail not exceeding six months, or by a*  
6 *fine not exceeding one thousand dollars (\$1,000), or by both that*  
7 *fine and imprisonment.*

8 (b) *Any mandated reporter who willfully fails to report abuse,*  
9 *or any person who impedes or inhibits a report of abuse, in*  
10 *violation of this article, where that abuse results in death or*  
11 *great bodily injury, shall be punished by not more than one year*  
12 *in a county jail, by a fine of not more than five thousand dollars*  
13 *(\$5,000), or by both that fine and imprisonment.*

14 SEC. 2. Section 11166.01 of the Penal Code is amended to  
15 read:

16 11166.01. ~~Any~~ (a) *Except as provided in subdivision (b), any*  
17 *supervisor or administrator who violates paragraph (1) of*  
18 *subdivision (h) of Section 11166—~~is guilty of an infraction~~*  
19 ~~*punishable*~~ *shall be punished by not more than six months in a*  
20 *county jail, by a fine ~~not to exceed five thousand dollars (\$5,000)~~*  
21 *of not more than one thousand dollars (\$1,000), or by both that*  
22 *fine and imprisonment.*

23 (b) *Any mandated reporter who willfully fails to report abuse,*  
24 *or any person who impedes or inhibits a report of abuse, in*  
25 *violation of this article, where that abuse results in death or*  
26 *great bodily injury, shall be punished by not more than one year*  
27 *in a county jail, by a fine of not more than five thousand dollars*  
28 *(\$5,000), or by both that fine and imprisonment.*

SEC. 3. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsperson or the local law enforcement agency.

Except in an emergency, the local ombudsperson and the local law enforcement agency shall, as soon as practicable, do all of the following:

(i) Report to the State Department of Health Services any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health

1 and Safety Code, or in an adult day care facility, as defined in  
2 paragraph (2) of subdivision (a) of Section 1502.

3 (iii) Report to the State Department of Health Services and the  
4 California Department of Aging any case of known or suspected  
5 abuse occurring in an adult day health care center, as defined in  
6 subdivision (b) of Section 1570.7 of the Health and Safety Code.

7 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse  
8 any case of known or suspected criminal activity.

9 (B) If the suspected or alleged abuse occurred in a state mental  
10 hospital or a state developmental center, the report shall be made  
11 to designated investigators of the State Department of Mental  
12 Health or the State Department of Developmental Services, or to  
13 the local law enforcement agency.

14 Except in an emergency, the local law enforcement agency  
15 shall, as soon as practicable, report any case of known or  
16 suspected criminal activity to the Bureau of Medi-Cal Fraud and  
17 Elder Abuse.

18 (C) If the abuse has occurred any place other than one  
19 described in subparagraph (A), the report shall be made to the  
20 adult protective services agency or the local law enforcement  
21 agency.

22 (2) (A) A mandated reporter who is a clergy member who  
23 acquires knowledge or reasonable suspicion of elder or  
24 dependent adult abuse during a penitential communication is not  
25 subject to paragraph (1). For purposes of this subdivision,  
26 “penitential communication” means a communication that is  
27 intended to be in confidence, including, but not limited to, a  
28 sacramental confession made to a clergy member who, in the  
29 course of the discipline or practice of his or her church,  
30 denomination, or organization is authorized or accustomed to  
31 hear those communications and under the discipline tenets,  
32 customs, or practices of his or her church, denomination, or  
33 organization, has a duty to keep those communications secret.

34 (B) Nothing in this subdivision shall be construed to modify or  
35 limit a clergy member’s duty to report known or suspected elder  
36 and dependent adult abuse when he or she is acting in the  
37 capacity of a care custodian, health practitioner, or employee of  
38 an adult protective agency.

39 (C) Notwithstanding any other provision in this section, a  
40 clergy member who is not regularly employed on either a

1 full-time or part-time basis in a long-term care facility or does  
2 not have care or custody of an elder or dependent adult shall not  
3 be responsible for reporting abuse or neglect that is not  
4 reasonably observable or discernible to a reasonably prudent  
5 person having no specialized training or experience in elder or  
6 dependent care.

7 (3) (A) A mandated reporter who is a physician and surgeon,  
8 a registered nurse, or a psychotherapist, as defined in Section  
9 1010 of the Evidence Code, shall not be required to report,  
10 pursuant to paragraph (1), an incident where all of the following  
11 conditions exist:

12 (i) The mandated reporter has been told by an elder or  
13 dependent adult that he or she has experienced behavior  
14 constituting physical abuse, as defined in Section 15610.63 of the  
15 Welfare and Institutions Code, abandonment, abduction,  
16 isolation, financial abuse, or neglect.

17 (ii) The mandated reporter is not aware of any independent  
18 evidence that corroborates the statement that the abuse has  
19 occurred.

20 (iii) The elder or dependent adult has been diagnosed with a  
21 mental illness or dementia, or is the subject of a court-ordered  
22 conservatorship because of a mental illness or dementia.

23 (iv) In the exercise of clinical judgment, the physician and  
24 surgeon, the registered nurse, or the psychotherapist, as defined  
25 in Section 1010 of the Evidence Code, reasonably believes that  
26 the abuse did not occur.

27 (B) This paragraph shall not be construed to impose upon  
28 mandated reporters a duty to investigate a known or suspected  
29 incident of abuse and shall not be construed to lessen or restrict  
30 any existing duty of mandated reporters.

31 (4) (A) In a long-term care facility, a mandated reporter shall  
32 not be required to report as a suspected incident of abuse, as  
33 defined in Section 15610.07, an incident where all of the  
34 following conditions exist:

35 (i) The mandated reporter is aware that there is a proper plan  
36 of care.

37 (ii) The mandated reporter is aware that the plan of care was  
38 properly provided or executed.

39 (iii) A physical, mental, or medical injury occurred as a result  
40 of care provided pursuant to clause (i) or (ii).

1 (iv) The mandated reporter reasonably believes that the injury  
2 was not the result of abuse.

3 (B) This paragraph shall not be construed to require a  
4 mandated reporter to seek, nor to preclude a mandated reporter  
5 from seeking, information regarding a known or suspected  
6 incident of abuse prior to reporting. This paragraph shall apply  
7 only to those categories of mandated reporters that the State  
8 Department of Health Services determines, upon approval by the  
9 Bureau of Medi-Cal Fraud and Elder Abuse and the state  
10 long-term care ombudsperson, have access to plans of care and  
11 have the training and experience necessary to determine whether  
12 the conditions specified in this section have been met.

13 (c) (1) Any mandated reporter who has knowledge, or  
14 reasonably suspects, that types of elder or dependent adult abuse  
15 for which reports are not mandated have been inflicted upon an  
16 elder or dependent adult, or that his or her emotional well-being  
17 is endangered in any other way, may report the known or  
18 suspected instance of abuse.

19 (2) If the suspected or alleged abuse occurred in a long-term  
20 care facility other than a state mental health hospital or a state  
21 developmental center, the report may be made to the long-term  
22 care ombudsperson program. Except in an emergency, the local  
23 ombudsperson shall report any case of known or suspected abuse  
24 to the State Department of Health Services and any case of  
25 known or suspected criminal activity to the Bureau of Medi-Cal  
26 Fraud and Elder Abuse, as soon as is practicable.

27 (3) If the suspected or alleged abuse occurred in a state mental  
28 health hospital or a state developmental center, the report may be  
29 made to the designated investigator of the State Department of  
30 Mental Health or the State Department of Developmental  
31 Services or to a local law enforcement agency or to the local  
32 ombudsperson. Except in an emergency, the local ombudsperson  
33 and the local law enforcement agency shall report any case of  
34 known or suspected criminal activity to the Bureau of Medi-Cal  
35 Fraud and Elder Abuse, as soon as is practicable.

36 (4) If the suspected or alleged abuse occurred in a place other  
37 than a place described in paragraph (2) or (3), the report may be  
38 made to the county adult protective services agency.

1 (5) If the conduct involves criminal activity not covered in  
2 subdivision (b), it may be immediately reported to the  
3 appropriate law enforcement agency.

4 (d) When two or more mandated reporters are present and  
5 jointly have knowledge or reasonably suspect that types of abuse  
6 of an elder or a dependent adult for which a report is or is not  
7 mandated have occurred, and when there is agreement among  
8 them, the telephone report may be made by a member of the team  
9 selected by mutual agreement, and a single report may be made  
10 and signed by the selected member of the reporting team. Any  
11 member who has knowledge that the member designated to  
12 report has failed to do so shall thereafter make the report.

13 (e) A telephone report of a known or suspected instance of  
14 elder or dependent adult abuse shall include, if known, the name  
15 of the person making the report, the name and age of the elder or  
16 dependent adult, the present location of the elder or dependent  
17 adult, the names and addresses of family members or any other  
18 adult responsible for the elder or dependent adult's care, the  
19 nature and extent of the elder or dependent adult's condition, the  
20 date of the incident, and any other information, including  
21 information that led that person to suspect elder or dependent  
22 adult abuse, as requested by the agency receiving the report.

23 (f) The reporting duties under this section are individual, and  
24 no supervisor or administrator shall impede or inhibit the  
25 reporting duties, and no person making the report shall be subject  
26 to any sanction for making the report. However, internal  
27 procedures to facilitate reporting, ensure confidentiality, and  
28 apprise supervisors and administrators of reports may be  
29 established, provided they are not inconsistent with this chapter.

30 (g) (1) Whenever this section requires a county adult  
31 protective services agency to report to a law enforcement agency,  
32 the law enforcement agency shall, immediately upon request,  
33 provide a copy of its investigative report concerning the reported  
34 matter to that county adult protective services agency.

35 (2) Whenever this section requires a law enforcement agency  
36 to report to a county adult protective services agency, the county  
37 adult protective services agency shall, immediately upon request,  
38 provide to that law enforcement agency a copy of its  
39 investigative report concerning the reported matter.

1 (3) The requirement to disclose investigative reports pursuant  
2 to this subdivision shall not include the disclosure of social  
3 services records or case files that are confidential, nor shall this  
4 subdivision be construed to allow disclosure of any reports or  
5 records if the disclosure would be prohibited by any other  
6 provision of state or federal law.

7 (h) Failure to report, *or impeding or inhibiting a report of*,  
8 physical abuse, as defined in Section 15610.63 of the Welfare  
9 and Institutions Code, abandonment, abduction, isolation,  
10 financial abuse, or neglect of an elder or dependent adult, in  
11 violation of this section, is a misdemeanor, punishable by not  
12 more than six months in the county jail, by a fine of not more  
13 than one thousand dollars (\$1,000), or by both that fine and  
14 imprisonment. Any mandated reporter who willfully fails to  
15 report, *or impedes or inhibits a report of*, physical abuse, as  
16 defined in Section 15610.63 of the Welfare and Institutions  
17 Code, abandonment, abduction, isolation, financial abuse, or  
18 neglect of an elder or dependent adult, in violation of this section,  
19 where that abuse results in death or great bodily injury, shall be  
20 punished by not more than one year in a county jail, by a fine of  
21 not more than five thousand dollars (\$5,000), or by both that fine  
22 and imprisonment. If a mandated reporter intentionally conceals  
23 his or her failure to report an incident known by the mandated  
24 reporter to be abuse or severe neglect under this section, the  
25 failure to report is a continuing offense until a law enforcement  
26 agency specified in paragraph (1) of subdivision (b) of Section  
27 15630 of the Welfare and Institutions Code discovers the offense.

28 (i) For purposes of this section, “dependent adult” shall have  
29 the same meaning as in Section 15610.23.

30 SEC. 4. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the  
35 penalty for a crime or infraction, within the meaning of Section  
36 17556 of the Government Code, or changes the definition of a  
37 crime within the meaning of Section 6 of Article XIII B of the  
38 California Constitution.

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